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Valley Telephone Cooperative Copper Valley Telephone Valley Connections, LLC
Valley Telecommunications - Internet - Business Systems

27

February 1, 2008

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007-2927

Re: Responses of Valley Telecom Group to Staff's Data Requests Dated November 6, 2007 Regarding the Commission's Investigation into Preferred Provider Arrangements, Docket No. T-00000K-04-0927

Enclosed please find the responses of Valley Telecom Group on behalf of its Arizona LEC affiliates to the Staff's Set of Data Requests dated November 6, 2007 regarding the Commission's Investigation into Preferred Provider Arrangements, Docket No. T 00000K-04-0927. Valley's Arizona ILEC affiliates are Valley Telephone Cooperative, Inc. and Copper Valley Telephone, Inc. Valley's CLEC affiliate is Valley Connections, L.L.C.

Sincerely,

Virgil Barnard
Contracts & Compliance Manager

Cc: Service List

Arizona Corporation Commission
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**RESPONSES OF VALLEY TELECOM GROUP TO STAFF'S PREFERRED
PROVIDER AGREEMENTS ISSUES LIST
DOCKET NO. T-00000K-04-0927
NOVEMBER 6, 2007**

PPA 1-1 What do you believe the scope of this proceeding should be and what issues should the Commission address with respect to the use of preferred provider/preferred carrier/marketing agreements in master planned communities?

Response: The scope of this proceeding should include agreements between real estate developers and suppliers of communications services that limit the ability of competing communications suppliers to provide their services within master planned communities. The kinds of limitations that should be addressed include excluding competing suppliers from the development altogether, raising rivals' costs of entering the development and providing for exclusive marketing agreements. Raising rivals' costs involves keeping competitors out until after the streets are paved and sidewalks, driveways and curbs are installed. Raising rival's costs may also involve preventing telecommunications carriers from achieving economies of scope by excluding them from the provision of broadband and video services or requiring homeowners to pay fees for such services from the developer's chosen supplier whether they subscribe to them or not. Among the public interest issues at stake are the need to prohibit anticompetitive practices, make public arrangements that may be contrary to the interests of homeowners and enforce carrier-of-last-resort obligations.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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- PPA 1-2** Does your company enter into preferred provider/preferred carrier agreements with property owners/developers of master planned communities that address issues associated with:
- a. The installation of telecommunications network facilities?
 - b. The price associated with the installation of those facilities?
 - c. Marketing of telecommunications services?
 - d. Distribution of sales literature?
 - e. Statements regarding the property owner/developer's "preferred" provider of telecommunications services?
 - f. Incentives to the property owner/developer to encourage end user customers to obtain telecommunications service from the "preferred" provider of telecommunications services?

Response: No.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-3 Please describe what you would characterize as a preferred provider/preferred carrier agreement. Please describe in detail the provisions of any preferred provider/preferred carrier agreement that you have entered into with property owners/developers of master planned communities.

Response: Preferred carrier arrangements include agreements between real estate developers and communications suppliers that restrict the ability of competing communications suppliers to provide their services within master planned communities, including excluding competitors from access to homes, homeowners and rights of way, limiting homeowners' choice of providers and preventing rivals from marketing their services.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-4 If your response to PPA 1-2 is in the affirmative, please describe any revenue sharing provisions from such agreements. Are revenue sharing provisions a standard or typical provision in such agreements.

Response: Not applicable. See the response to PPA 1-2.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-5 Please describe what you would characterize as a marketing agreement. Please describe in detail the provisions of any marketing agreement that you have entered into with property owners/developers of master planned communities.

Response: A marketing agreement within a master planned community would prevent rivals of a developer's chosen communications provider from advertising their services on the developer's premises. Valley Telecom Group has not entered into any such agreements. See the response to PPA 1-2.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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- PPA 1-6** Please provide the following information for each preferred provider agreement/preferred carrier/marketing agreement with master planned communities signed since April 1, 1998 to current within the State of Arizona. Please provide all information in excel, spreadsheet, electronic file format. Each item named below should be taken to represent a column heading in an excel spreadsheet.
- a. The name and date of each agreement.
 - b. The name of the master planned community.
 - c. The name of each party participating in the agreement.
 - d. A contact name corresponding to the name of each party participating in the agreement.
 - e. The address of the contact name corresponding to the name of each party participating in the agreement.
 - f. The phone number of the contact name corresponding to the name of each party participating in the agreement.
 - g. The signing (From) date of the agreement.
 - h. The ending date (To) of the agreement.
 - i. The number of residential units, homes, main accounts or lines expected to be covered by the agreement.
 - j. The number of business units, main accounts or lines expected to be covered by the agreement.

Response: Not applicable. See the response to PPA 1-2.

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Contracts & Compliance Manager
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Willcox, AZ 85644
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PPA 1-7 Have you entered into an agreement that prohibits property owners/developers from marketing the services of other telecommunications service providers within such master planned communities?

Response: Not applicable. See the response to PPA 1-2.

Prepared by Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
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PPA 1-8 Can property owners/developers who have preferred provider/preferred carrier or marketing agreements with you distribute, or allow to be distributed, the advertising literature of any other telecommunications company?

Response: Not applicable. See the response to PPA 1-2.

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PPA 1-9 If your response to PPA 1-8 is negative, please indicate whether you consider such terms to be anti-competitive from the end-users' perspective and the rationale for your position.

Response: Not applicable. See the response to PPA 1-8.

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Contracts & Compliance Manager
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PPA 1-10 Do your agreements include services other than telecommunications services?

Response: Not applicable. See the response to PPA 1-2.

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PPA 1-11 What consideration do property owners/developers of master planned communities receive as compensation for entering into either preferred provider/preferred carrier/marketing agreements with telecommunications carriers?.

Response: Not applicable. See the response to PPA 1-2.

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PPA 1-12 Do your agreements include items such as exclusive marketing rights which limits the ability of your competitors to market their services in areas where you have entered into agreements with the property owners/developers of master planned communities?

Response: Not applicable. See the response to PPA 1-2.

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Valley Telecom Group
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PPA 1-13 Should preferred provider/preferred carrier/marketing agreements be allowed in master planned communities, and in your opinion, are they in the public interest? Please elaborate.

Response: Under current law, it may not be possible to prohibit developers/property owners and telecommunications carriers from signing preferred provider agreements. The act of designating a preferred provider for a development, in and of itself, is not necessarily harmful to competition or universal service. However, if a preferred provider agreement has the effect of establishing an exclusive provider for a development, then such an agreement would violate the principles of competition and universal service, which are the cornerstones of our national telecommunications policy. In extreme cases, such agreements may violate Section 253 of the Telecommunications Act of 1996 if they constitute unlawful barriers to entry and include participation by a municipal entity.

A developer may effectively create an exclusive provider in a number of ways including but not limited to: (a) restricting a provider's access to open trenches within the development for the placement of underground infrastructure, or providing access to open trenches on terms and conditions which are not substantially equivalent between providers; (b) establishing legal barriers to entry into the development; (c) imposing significant right-of-way fees; (d) entering into long-term contracts with providers through homeowners associations; (e) adopting covenants, conditions and restrictions ("CC&Rs") which favor one provider over another; (f) adopting CC&Rs which favor one telecommunications technology over another; (g) placing discretion in the hands of the developer/property owner regarding the types of telecommunications services that may be provided in the development; and (h) imposing construction requirements or other requirements that have the effect of favoring one provider over another.

Each of the above-listed practices can restrict or eliminate competition by increasing the costs of entry to a competitor, or in some cases, prohibiting entry to a development outright. In some cases, such practices may actually prohibit an incumbent local exchange carrier from acting as carrier of last resort. Clearly, restrictions on customer choice and access to universal service are contrary to the public interest. In addressing these issues, the Arizona Corporation Commission should focus its attention on anti-competitive practices that have the effect of creating a *de facto* exclusive provider, rather than solely on the existence of a preferred provider.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley

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Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-14 Provide a copy of a "standard" preferred provider preferred carrier/marketing agreement that you have entered into, and any associated or related agreements governing your provision of service to a master planned community.

Response: Not applicable. See the response to PPA 1-2.

Prepared by Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-15 What are your standard terms for the installation of facilities in a master planned community?

Response: The standard terms for the installation of facilities in a master planned community are contained in the respective tariffs of Valley's three Arizona LECs on file with the Arizona Corporation Commission and in Arizona Administrative Code R14-2-501 *et seq.*, and specifically, R14-2-506.

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Contracts & Compliance Manager
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P.O. Box 970
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Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1.16 What are the benefits to the telecommunications service provider of entering into preferred provider/preferred carrier/marketing agreements in master planned communities? What are the benefits to the developer?

Response: Although Valley's three Arizona LECs have not participated directly in preferred provider/preferred carrier/marketing agreements with property owners/developers, Valley believes the benefit to the preferred provider depends upon the specific structure and content of the agreement. Service provider benefits could include a more efficient marketing effort, higher market penetration within the development, larger customer revenue stream, and/or more efficient installation effort. Regarding disadvantages, Valley believes that if these agreements are not structured properly the preferred carrier could potentially violate regulatory/legal prohibitions by exhibiting anticompetitive behavior.

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Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1.17 What are the benefits to the property owner/developer of entering into preferred provider/preferred carrier/marketing agreements in master planned communities? What, if any, are the disadvantages?

Response: Although Valley's three Arizona LECs have not participated directly in preferred provider/preferred carrier/marketing agreements with property owners/developers, Valley believes that within these agreements the developer often receives the benefit of cash compensation and certain guarantees from the preferred carrier regarding quality of service, timeliness of service installation, etc. It is notable that the cash compensation within these agreements is often tied to metrics that give the developer an incentive to protect the preferred carrier's market share within the development.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-18 What is the standard term (months or years) of a preferred provider/preferred carrier/marketing agreement with a property owner/developer of a master planned community?

Response: Although Valley's three Arizona LECs have not participated directly in preferred provider/preferred carrier/marketing agreements with property owners/developers, Valley believes that the standard term of these agreements is a long enough time period (Valley understands that terms are commonly 10 years or more) for the preferred carrier to establish a significant customer base in the development.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-19 Are third party telecommunications companies allowed to provide service over facilities that are used to provide services that are covered by a preferred provider/preferred carrier/marketing agreement in master planned communities? If your response is in the affirmative, under what rates, terms and conditions is this allowed?

Response: The answer to this question would depend upon the specific agreement. See the response to PPA 1-2.

Prepared by: Virgil Barnard

Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-20 Do you enter into other agreements, other than preferred carrier or marketing agreements, with developers that relate to the provision of telecommunications services? If so, please describe these agreements.

Response: Incumbent local exchange carriers may, from time to time, enter into construction agreements with developers for the installation of telecommunications facilities in new developments. Such construction agreements are in accordance with tariffs approved by the Arizona Corporation Commission and the Commission's rules, including Arizona Administrative Code R14-2-506.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-21 Do you believe the preferred carrier agreements or marketing agreements provide an impediment to the ability of end users to purchase telecommunications services in a competitive market? Please explain why you believe that they do or do not impede customers' access to a competitive telecommunications marketplace.

Response: Preferred carrier agreements and marketing agreements can impede the ability of end users to purchase telecommunications services in a competitive market. See the response to PPA 1-13.

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Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
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520-384-8932
virgil.barnard@vtc.net

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PPA 1-22 Do you believe that preferred carrier agreements are anti-competitive? Please explain the basis for your belief.

Response: Preferred carrier agreements can be implemented in such a way as to be anti-competitive. For additional information, see the response to PPA 1-13.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-23 Do you believe that exclusive marketing agreements which prevent property owners/developers from marketing a competitor's service in master planned communities are anti-competitive? Please explain the basis for your belief.

Response: No. Exclusive marketing arrangements whereby a telecommunications provider compensates a property owner/developer for the exclusive privilege of marketing its services on the developer's property are not anticompetitive. Exclusive marketing agreements allow telecommunications providers to take advantage of an advertising channel and entering into such agreements is open to all. Advertising in this manner is no more anticompetitive than advertisers paying television networks for the exclusive privilege of marketing their products during a specific television program.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
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520-384-8932
virgil.barnard@vtc.net

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PPA 1-24 Do your preferred carrier agreements or marketing agreements contain a condition that the terms and conditions of the agreement are confidential?

Response: Not applicable. See the response to PPA 1-2.

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Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1.25 Has the ability to access customers in master planned communities been impeded by the existence of a preferred provider/preferred carrier/marketing agreement between one of your competitors and a property owner/developer?

Response: No.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-26 Other than preferred provider/preferred carrier/marketing agreements, are there other customer access problems in master planned communities?

Response: No.

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Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-27 Are there property owners/developers of master planned communities that impose restrictions on your ability to gain access to a right of way? Please describe any such restriction.

Response: No.

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Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-28 Does your company utilize preferred provider/preferred carrier/marketing agreements in master planned communities within other states?

Response: No.

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Contracts & Compliance Manager
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P.O. Box 970
752 E. Maley
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virgil.barnard@vtc.net

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PPA 1-29 Has the use of preferred provider/preferred carrier/marketing agreements in master planned communities been addressed or investigated by any other regulatory agency to your knowledge? If you are aware of any such proceeding, please provide the name of the agency, the docket number of the proceeding, and any other information you may have regarding the status of the case.

Response: Valley is aware that in October 2005, the North Carolina Public Utilities Commission ("NCPUC") adopted Rule R20-2 entitled *Fair Competition among Local Telecommunications Service Providers* ("Rule") which addresses preferred provider arrangements. A copy of that Rule, as well as information regarding the NCPUC complaint matter that preceded the Rule's adoption, is set forth in the comments already filed in this Docket by Accipiter Communications, Inc. on March 27, 2007.

More recently, on October 26, 2007, the Florida Public Service Commission issued an Order granting a petition by AT&T for relief from its carrier-of-last resort ("COLR") obligations as a result of a form of preferred provider arrangement that had been entered into between a developer and Comcast. Unlike Arizona, Florida has a statute that permits a local exchange carrier to be relieved of its COLR obligations under certain circumstances.

Prepared by: Virgil Barnard
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P.O. Box 970
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PPA 1-30 Have there been any court proceedings involving preferred provider/preferred carrier/marketing agreements in master planned communities that you are aware of? If your response is in the affirmative, please provide a case number and cite, if available.

Response: Valley is not aware of any court proceedings involving preferred provider agreements.

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PPA 1-31 Are you aware of any States that have enacted laws concerning the use of preferred provider/preferred carrier/marketing agreements in master planned communities? If yes, please provide a copy of the state laws with your response.

Response: Except as set forth in the Response to PPA 1-29 above, Valley is not aware of any States that have enacted laws concerning the use of preferred provider agreements.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
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PPA 1-32 Do you believe such arrangements should be, or are, unlawful? Please explain your response.

Response: Valley believes arrangements between developers and telecommunications companies that exclude competitors directly or raise rivals' costs are or should be unlawful. If such arrangements are permitted, then ILECs that have carrier-of-last-resort obligations should be relieved of them.

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virgil.barnard@vtc.net

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PPA 1-33 Are business lines/customers treated differently than residential lines/customers within a master planned community that is under a preferred provider/preferred carrier/marketing agreement? If your response is in the affirmative, please explain how the treatment differs?

Response: The answer to this question would likely depend upon the terms of the preferred provider or exclusive marketing agreement. Valley has no specific information concerning whether and how business customers may be treated differently than residential customers under such agreements.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-34 Please provide a sample of all marketing literature distributed by the property owner/developer and your company regarding the provision of telephone service to a master planned community covered by a preferred provider/preferred carrier/marketing agreement.

Response: Valley does not have any such marketing literature. See the response to PPA 1-2.

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Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-35 Please provide copies of all unique marketing compensation schedules that were included in final preferred provider/preferred carrier/marketing agreements for all master planned communities served by your company. Each unique marketing compensation schedule should be accompanied with the name of the master planned community for which it applies. (For the purposes of this proceeding, please assume that a marketing compensation schedule is any description of revenue sharing terms and conditions or payments to property owners/developers of master planned communities by providers for services intended to increase or facilitate the penetration of telecommunications products and services.)

Response: Not applicable. See the response to PPA 1-2.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-36 Has your company ever entered into preferred provider/preferred carrier/marketing agreements for master planned communities that included capital contributions provided to your company or an affiliates? (For the purpose of this proceeding, please assume that a capital contribution is any payment of cash, check or bank transfer.) If your response is in the affirmative, please provide the following:

- a. The amount of capital contribution.
- b. The name of the property owner/developer of the master planned community.
- c. The name of the master planned community for which the capital contribution applies.

Response: No.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
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virgil.barnard@vtc.net

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- PPA 1-37** Has your company ever engaged in discussions with property owners/developers of master planned communities that included any form of private easement? If your response is in the affirmative, please provide the following:
- a. The timeframe of such discussions.
 - b. The name of the property owners/developers involved in such discussions.
 - c. The name of the master planned community corresponding to such discussions.
 - d. Who initiated such discussions.
 - e. Whether or not your company entered into an agreement that included a private easement. If not, please explain why not.

Response: The meaning of the term "private easement" as used in PPA 1-37 is unclear; nevertheless, Valley's three Arizona LECs have not initiated discussions with property owners/developers involving exclusive use of rights of way. Further Valley has not and would not currently enter into such an agreement.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-38 Has your company ever entered into preferred provider/preferred carrier/marketing agreements with property owners/developers of master planned communities that included any form of private easement? If your response is in the affirmative, please provide the following:

- a. The timeframe of such agreements.
- b. The name of the property owners/developers involved in such agreements.
- c. The name of the master planned community corresponding to such agreements.

Response: The meaning of the term "private easement" as used in PPA 1-38 is unclear; nevertheless, Valley's three Arizona LECs do not have agreements with property owners/developers involving exclusive use of rights of way.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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- PPA 1-39** Has your company ever engaged in discussions with property owners/developers of master planned communities that included any form of license fees required to provide telecommunications services? If your response is in the affirmative, please provide the following:
- a. The timeframe of such discussions.
 - b. The name of the property owners/developers involved in such discussions.
 - c. The name of the master planned community corresponding to such discussions.
 - d. Who initiated such discussions.
 - e. Whether or not your company entered into an agreement that included license fees. If not, please explain why not.

Response: The meaning of the phrase "license fees" required to provide telecommunications services" as used in PPA 1-49 is unclear; nevertheless, Valley's three Arizona LECs have not initiated discussions with property owners/developers involving payments from the ILEC to property owners/developers for the right to provide telecommunications services. Further Valley has not and would not currently enter into such an agreement.

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Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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PPA 1-40 Has your company ever entered into preferred provider/preferred carrier/marketing agreements with property owners/developers of master planned communities that included any form of license fees required to provide telecommunications services? If your response is in the affirmative, please provide the following:

- a. The timeframe of such agreements.
- b. The name of the property owners/developers involved in such agreements.
- c. The name of the master planned community corresponding to such agreements.

Response: The meaning of the phrase "license fees" required to provide telecommunications services" as used in PPA 1-40 is unclear; nevertheless, Valley's three Arizona LECs do not have agreements with developers involving payments to developers for the right to provide telecommunications services.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net

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- PPA 1-41** For each master planned community, from April 1, 1998 to current, in which your company provides telecommunications services but is not or was not the preferred carrier, please provide the following information in excel, spreadsheet, electronic file format. (Each item named below should be taken to represent a column heading in an excel spreadsheet).
- a. The name of the master planned community.
 - b. The date when your company initiated service in the master planned community.
 - c. The name of the preferred provider/preferred carrier serving the master planned community.
 - d. Whether the services are provided via resale, facilities-based or both.
 - e. The number of units, homes, main accounts or lines being served by your company in the development.

Response: Valley is not aware of any such communities.

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Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
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virgil.barnard@vtc.net

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PPA 1-42 Do you believe area code boundary changes for master planned communities that cover multiple area codes are in the public interest? If yes, please explain as completely as possible.

Response: Yes. As a result of its membership in ALECA, Valley has learned of a master planned community split by two area codes. In this community consumers have been frustrated and confused by multiple area codes, even though those area codes may be included within the same local calling area. As an example of the difficulties created in this community, the PBX system within the community's school was initially provisioned incorrectly and failed to translate one of the community's area codes as a local call, therefore calls made from within the school could not complete to the residents located in that particular area code.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
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PPA 1-43 Would your company support the elimination of preferred provider/preferred carrier/marketing agreements in master planned communities under any circumstance? If yes, please explain as completely as possible.

Response: No, Valley does not support eliminating preferred provider agreements under all circumstances but believes it is in the public interest to prohibit anticompetitive practices; that is, agreements erecting artificial barriers to entry or raising rivals' costs.

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Contracts & Compliance Manager
Valley Telecom Group
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PPA 1-44 Has your company ever considered but not proceeded with filing a complaint before any Commission or taking legal action in matters concerning a preferred provider/preferred carrier/marketing agreement or the provision of services for a master planned community? If yes, please explain:

- a. The name of the master planned community.
- b. The relevant date(s) or timeframe.
- c. Why the company chose not to file a complaint before the Commission or take legal action.

Response: No.

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Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
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virgil.barnard@vtc.net

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- PPA 1-45** Has your company ever filed a complaint with any Commission or taken legal action in matters concerning a preferred provider/preferred carrier/marketing agreement or the provision of services for a master planned community? If yes, please provide the following:
- a. The name of the master planned community.
 - b. The date the action or actions were taken.
 - c. A copy of each application filed with the Commission and/or each legal proceeding.

Response: No.

Prepared by: Virgil Barnard
Contracts & Compliance Manager
Valley Telecom Group
P.O. Box 970
752 E. Maley
Willcox, AZ 85644
520-384-8932
virgil.barnard@vtc.net